"This action, by a stipulation in writing, having been heretofore submitted to the judgment of the court without the intervention of a jury, and the court having heard the evidence and the arguments of counsel, and being now sufficiently advised, makes part of this judgment the following: 'Finding of Fact.'

"1. The court finds that the plaintiff is a citizen of the State of New York, and was so when this action was instituted on March 28, 1899, and that the plaintiff was then the *bona fide* holder for value of the bonds and coupons sued on, and fully entitled to sue the defendant thereon in this court.

"2. That the Cumberland & Ohio Railroad Company was a corporation organized and existing under the laws of the State of Kentucky, with power to receive a subscription to its capital stock from the defendant, Green County, and said county was authorized conformably to law to make a subscription to said capital stock and to pay for the same in bonds of said county.

"3. That June 17, 1869, there was, as appears from the records thereof, presented to the Green County Court by commissioners of said railroad company the following request:

"'We, the undersigned, commissioners of the Cumberland & Ohio Railroad Company, hereby request that the County Court of Green County submit to a vote of the qualified voters of said county the question, "Whether said Court shall subscribe for and on behalf of said county, and in pursuance of the provisions of the charter of said railroad company, two hundred and fifty thousand dollars to the capital stock of said company, payable in the bonds of said county, having twenty years to run and bearing six per cent interest from date, upon the condition that said company shall locate and construct said railroad through Green County and within one mile of the town of Greensburg in said county, and shall expend the amount so subscribed within the limits of Green County; and also upon the further conditions that said bonds shall not be issued or said county pay any part of either principal or in-

terest on said amount subscribed as aforesaid until said county of Green shall be fully and completely exonerated from the payment of the capital stock subscribed for by the County Court of said county for and on behalf of said county to the Elizabethtown & Tennessee Railroad Company.' "

"4. That on the same day, namely, on June 17th, 1869, the County Judge of Green County, acting alone and as the County Court, entered an order in said Court in the following language:

" 'Present: Thos. R. Barnett, Judge.

" 'Whereas the Commissioners of the Cumberland & Ohio Railroad Company by virtue of the authority delegated to them by the charter of said company, have requested the County Court of Green County to order an election in the said county of Green, and to submit to the qualified voters of said county the question whether said county court shall subscribe for and on behalf of said county, two hundred and fifty thousand dollars to the capital stock of the Cumberland & Ohio Railroad Company and payable in the bonds, of said county, having twenty years to run and bearing six per cent interest from date, and upon condition that said company shall locate and construct said railroad through the said county of Green, and within one mile of the town of Greensburg, in said county, and shall expend the amount so subscribed within the limits of Green County; and also upon the further condition that said bonds shall not be issued or said county pay any part of the principal or interest on said amount subscribed to said Cumberland & Ohio Railroad Company, until said county of Green is fully and completely exonerated from the payment of the capital stock voted by said county, and authorized to be subscribed by said Green County Court to the Elizabethtown & Tennessee Railroad or any part of the interest thereon. It is therefore, ordered by the court that an election by the qualified voters of Green County, at the voting places in said county, be held and conducted by the several officers as prescribed by law for holding elections, on the third

day of July, 1869, to vote on the question as to whether or not the said County Court shall, for and on behalf of said county subscribe two hundred and fifty thousand dollars to the capital stock of the said Cumberland & Ohio Railroad conditioned and to be paid, as above stated.'

"5. That at the election held pursuant to said order there were cast in favor of said proposition and subscription a majority of the votes of the qualified voters of said county, and this fact, upon being duly ascertained, was certified by the proper officers as required by law.

"6. That on the third day of June, 1870, the County Judge of said county, acting alone and as the county court of said county, entered an order in said court as follows:

"'Present: Thomas R. Barnett, Judge.

"'Whereas, in pursuance of an order of this Court made on the 17th day of June, 1869, an election was held in the said County of Green, on the third day of July, 1869, at the several precincts of said county, and it appearing that a majority of the qualified voters at said election decided that the county of Green should subscribe for two hundred and fifty thousand dollars of the capital stock of the Cumberland & Ohio Railroad Company; now it further appearing that said election was held in conformity with the law, and in accordance with the provisions of the charter of said company, now, therefore, I, Thomas R. Barnett, the presiding judge of the Green County Court, by virtue of the authority in me vested by law, and to carry out the wishes of said voters, do hereby subscribe for two hundred and fifty thousand dollars of the capital stock of said Cumberland & Ohio Railroad Company, for and on behalf of said county of Green, which subscription is to be paid in the bonds of said county as prescribed in said order of submission, and this subscription is made with the conditions set out in the order of this Court, ordering said election and now of record in the office of this county.'

"7. That on the 12th day of October, 1871, the said county Judge of said county, acting alone and as the county court of

said county, entered an order in said court in the following language:

"'Present: Thomas R. Barnett, Judge.

"'On motion of E. H. Hobson, director of the Cumberland & Ohio Railroad, it is ordered that Z. F. Smith, president of the Cumberland & Ohio Railroad, be, and he is hereby authorized to have printed for the county of Green the bonds to the amount of two hundred and fifty thousand dollars, the amount of the subscription of Green County to the said railroad, in the following denominations, to wit, the same to be conditioned as specified in the order submitting the vote to the said county:

125 bonds at	$1,000	$125,000 00
200 bonds at	500	100,000 00
250 bonds at	100	25,000 00
		$250,000 00'

"8. That pursuant to all that was done, as aforesaid, the defendant, Green County, issued and delivered to the said Cumberland & Ohio Railroad Company $250,000 of its bonds of the description aforesaid except that the said conditions were not stated therein, in payment of said subscriptions to said capital stock, and thereupon there was delivered to said county in payment thereof, and said county received, and has ever since held and owned, the certificates of the said railroad company for the 2,500 shares of $100 each of its capital stock so paid for by said bonds.

"9. That the $47,509 of bonds and coupons sued on in this action were part of the bonds thus issued and delivered to said railroad company in payment for said stock.

"10. That while the proposed line of said railroad was located through said county from its northern line to its southern line, and within one mile of Greensburg, yet that only about five miles of said railroad has ever been constructed or attempted to be constructed in said county, the part thus constructed extending from the northernmost line of said county

to the town of Greensburg, the county seat; which town is located about fifteen miles from the southernmost line of the county and about as distant from any other line of the county except the northern line.

"11. That only $150,000 of the bonds thus issued, or the proceeds thereof, were expended within the limits of Green county. No other part of said bonds was expended in said county.

"12. That with said $150,000 of said bonds the grading, bridging and tunnelling on the track of said railroad was done and paid for over the five miles aforesaid, but no further, and when this was done, the work on the railroad was suspended for some years. Afterwards the rails and ties and superstructure generally were put upon the track theretofore graded and the railway was completed from the northernmost line of the county to Greensburg, under the terms of its lease, by the Louisville & Nashville Railroad Company at its own expense, and not with any of the bonds issued as aforesaid by the defendant.

"13. That on the 15th day of August, 1872, at a called term of the Green County Court, over which Thomas R. Barnett, County Judge, presided, and no justice of the peace being present, the following order was entered by said Court:

" 'Present: Thos. R. Barnett, Judge.

" 'Application was this day made to the presiding judge of the County Court of Green county, by the President and Board of Directors of the Cumberland & Ohio Railroad Company to issue the balance of the bonds of said county to the amount of the subscriptions of said county of Green to said Cumberland & Ohio Railroad Company, and the court being sufficiently advised, it is ordered by the court that the balance of said bonds be and they are hereby ordered to be issued, the same to be signed by the judge of said county court of Green county, and countersigned by the clerk of said court, as required by the charter of said company.'

"14. That except as to the number of the bond and the

amount agreed to be paid therein the bonds sued on were each of the following, namely:

"'United States of America,

"'*County of Green, State of Kentucky,* $500.00

"'For the Cumberland & Ohio Railroad.

"'Twenty years after date, the county of Green, in the State of Kentucky, will pay to the holder of this bond the sum of five hundred dollars with interest thereon at the rate of six per cent per annum, payable semiannually upon presentation of the proper coupons hereto attached, the principal and interest being payable at the Bank of America, in the city of New York.

"'In testimony whereof, the judge of said county of Green has hereunto set his hands and affixed the seal of said county, on the first day of April, A. D. 1871, and caused the same to be attested by the county clerk, who has also signed the coupons hereto attached.

"'[Green County Seal.] T. R. BARNETT, *Judge.*

"'D. T. TOWLES, *Clerk.*'

"As appears on the face of each of said bonds there was no recital therein of any of the facts herein found to be true.

"15. That the plaintiff knew when he purchased the bonds sued on that the railroad had not been constructed in Green county otherwise than as herein found to be the fact, namely, from the northern line of said county to the town of Greensburg, but no further.

"16. That in the year 1868, upon a proposition therefor being submitted to the vote of the qualified voters of Green County, the majority of said qualified voters voted in favor of a proposition to subscribe for $300,000 of the capital stock of the Elizabethtown & Tennessee Railroad Company, and upon the said result of the election being properly ascertained and certified the county judge of Green county, sitting alone and as the county court of said county, made and entered of record in said court the following orders:

"'1868. Green County Court, May Called Term, 1868, 20th Day of May.

"'Present: T. R. Barnett, Judge.

"'This day T. R. Barnett, Presiding Judge, and D. T. Towles, Clerk of the Green county court, *this day* produced their certificate in words and figures as follows, viz: We, T. R. Barnett, Presiding Judge, and D. T. Towles, Clerk of the Green county court, duly authorized to compare the Poll Book of Green county, certify that an election held in said county at the various voting places in said county, on the 16th day of May, 1868, on the question whether the county court of Green county shall, for and on behalf of said county, subscribed for three thousand shares in capital stock of Elizabethtown & Tennessee Railroad Co., to be paid for in the bonds of said county, payable in twenty years and bearing six per cent interest payable semi-annually in the city of New York, with interest coupons attached thereto, and that 586 votes were cast for said subscription and 204 against said subscription.

"'May 20th, 1868.

"'T. R. BARNETT.
"'D. T. TOWLES.

"'It is therefore ordered by the court that the said vote be, and is now, entered of record, as follows, to wit: 585 votes cast for said subscription, and 204 votes were cast against said subscription, showing that there is a majority for said subscription of three hundred and eighty-two votes.

"'It is now, therefore, ordered that the clerk of this court, for and on behalf of the county of Green, make said subscription on the terms specified in the order submitting the question to a vote as aforesaid.'

"17. That no formal or express exoneration of said county from the payment of said last named subscription was ever made or attempted, but nothing further has, up to this date, ever been done in respect to it, and neither bonds by the county nor stock by the said last named railroad company have ever

been issued or delivered in execution of said orders or under the terms of said subscription.

"Upon consideration of the facts hereinbefore found to be true, and of the opinion of the Court of Appeals, in the case of J. D. Shortell *v.* Green County, the court, in deference to said opinion, has reached the following

"*Conclusions of Law.*

"1. That the plaintiff is not entitled to recover because the conditions upon which the subscription for the capital stock of the Cumberland & Ohio Railroad Company was made and upon which the bonds sued on were issued have not been performed or complied with, and

"2. That the failure to recite in the bonds any of the facts herein found to be true, or any of the conditions upon which the bonds were issued, is immaterial as against the defense that there was a failure to perform the said conditions.

"*Judgment.*

"In consideration of the premises it is considered and adjudged by the court that the plaintiff's petition be and it is dismissed and that the defendant recover of the plaintiff its costs herein expended, and it may have execution therefor."

The defendant filed no exception or objection to the findings of fact, but the plaintiff excepted to the judgment and sued out a writ of error to the Circuit Court of Appeals, which, after the response by this court to a question certified to it (205 U. S. 410), reversed the judgment of the Circuit Court, with direction to enter a judgment for the plaintiff. The question to be determined is, whether on the findings of fact the Court of Appeals erred in ordering judgment for the plaintiff.

We think, although the defendant contends to the contrary, that the findings of fact, which accompanied the judgment of the Circuit Court, afford ample foundation for a final judgment. They were not objected to by the defendant at the time, and it was content to submit the case for judgment upon

them. Nor has anything been advanced in argument which leads us to doubt their accuracy, or to desire that they should be more complete.

The defendant's counsel has not confined his argument to the questions presented by the record. It seems expedient, therefore, simply to determine the questions deemed to arise on the record, and stop there.

When the case was here before it was decided that the county had the power to issue the bonds, upon the approval of the qualified voters, and that (following the ruling of the highest court of Kentucky in this respect) the voters might impose conditions upon the issue. The approval was given, and the conditions imposed were expressed in the vote, as follows:

" . . . upon condition that said company shall locate and construct said railroad through the said county of Green, and within one mile of the town of Greensburg, in said county, and shall expend the amount so subscribed within the limits of Green County; and also upon the further condition that said bonds shall not be issued or said county pay any part of the principal or interest on said amount subscribed to said Cumberland & Ohio Railroad Company until said county of Green is fully and completely exonerated from the payment of the capital stock voted by said county and authorized to be subscribed by said Green County Court to the Elizabethtown & Tennessee Railroad."

Bonds to the amount of $250,000 were issued, and delivered pursuant to the vote, to the Cumberland & Ohio Railroad Company, and some of them have come to be legally owned by the plaintiff. There was consideration for them in 2,500 shares of the stock of the company, which were delivered to the county and have been held by it up to the present time. There is not the slightest evidence of fraud in their issue.

The real defense is that the bonds were void because the conditions expressed in the vote, which are said to be indispensable prerequisites to their validity, have not been fulfilled.

The conditions relied on in defense are two, and they are subject to different considerations.

The condition that the bonds should not be issued until the county had been "exonerated" from a subscription theretofore authorized to be made to the stock of the Elizabethtown & Tennessee Railroad is a condition precedent to the lawful issue of the bonds. As these bonds contained no recital importing that the conditions had been performed, it was open to the county to show, even against a purchaser for value before maturity without notice, that the conditions had not been performed. But the issue of bonds in payment of a subscription to railroad stock by an officer charged with the duty of ascertaining whether the conditions indispensable to the lawful issue had been fulfilled, raises a presumption of their fulfillment prior to the issue. A lawful holder of the bonds is entitled to rely upon this presumption, although he incurs the danger that the presumption will be overcome by evidence. If he wishes absolute security in this respect, he must insist upon a recital. This much was determined by the decision of this court when the case was here before. *Quinlan* v. *Green County*, 205 U. S. 410. That case did not decide that there was a presumption of performance arising out of the length of time, during which no claim was made in respect of the Elizabethtown & Tennessee Railroad subscription, but that there was a presumption of performance before the issue of the bonds. When we come to look at the facts found by the Circuit Court there is nothing to rebut this presumption. On the contrary, everything tends to support it. Even the wide range of the argument for the defendant did not suggest a single fact which could, to the slightest extent, control the presumption. The conclusion follows that the exoneration from the prior subscription had happened before the issue of the bonds to the Cumberland & Ohio Railroad Company. That condition has been performed, and is not available as a defense.

We must next consider the effect of the provision in the vote, that the subscription to the stock payable in bonds shall

be "upon condition that said company shall locate and construct said railroad through the said county of Green, and within one mile of the town of Greensburg, in said county, and shall expend the amount so subscribed within the limits of Green County." If this part of the vote imposes a condition upon the lawful issue of the bonds or upon the obligation of the county to pay them, the defense must prevail, for the condition has not been performed. Only $150,000 have been expended within the limits of the county, and the railroad, though constructed to Greensburg, a distance of five miles, was not carried further, although it was located from north to south through the county, a distance of twenty miles. It is not conclusive that the obligation thus imposed upon the railroad company is called a condition. It frequently has been the case that the word condition has been used in written instruments in a looser and broader sense than the law attaches to it. In ascertaining the true meaning of instruments in writing courts do not confine their attention to single words, phrases, or sentences. The meaning is sought from the whole instrument, viewed in the light of the subject with which it deals. This general rule of interpretation often makes it manifest that that which is called a condition is really but a covenant or agreement, to be performed independently of the counter obligation with which it is associated. When such an intent is discovered the courts have no difficulty in giving it effect, though the result be to disregard the technical meaning of the word condition. *Stanley* v. *Colt*, 5 Wall. 119; *Sohier* v. *Trinity Church*, 109 Massachusetts, 1; *Episcopal City Mission* v. *Appleton*, 117 Massachusetts, 326; *Cassidy* v. *Mason*, 171 Massachusetts, 507; *Clapp* v. *Wilder*, 176 Massachusetts, 332; *Post* v. *Weil*, 115 N. Y. 361; *Clark* v. *Martin*, 49 Pa. St. 289; *Watrous* v. *Allen*, 57 Michigan, 362; *Scoville* v. *McMahon*, 62 Connecticut, 378; *Hartung* v. *Witte*, 59 Wisconsin, 285.

A consideration of the vote of the county leaves no doubt that that part of it which prescribed the nature of the railroad construction was not a condition. It would have been easy

to have postponed the obligation to pay the bonds until the construction had been completed, as desired by the county. Such a provision as that in *Provident Life and Trust Company* v. *Mercer County*, 170 U. S. 594, would have been enough. Indeed, the draftsman need not have looked afield. Nothing need have been done except to use the same language with reference to construction which he used in this vote with reference to exoneration from the prior subscription to the stock of another railroad. There he said that the subscription should be "upon the further condition that said bonds shall not be issued or said county pay any part of the principal or interest" until the exoneration had happened. The studied omission of this apt, clear and emphatic language from the part of the vote dealing with the construction of the Cumberland & Ohio Railroad is of controlling significance. If the question rested upon this comparison of language alone, it would be quite enough to warrant the inference that it was not intended that the condition which was imposed in the one case should be equally imposed in the other. This conclusion is confirmed by a consideration of the subject-matter with which the vote dealt. It would have defeated the very purpose for which the bonds were issued if the obligation to pay them had been made conditional upon the completion of the construction desired. The railroad, to whose stock the county was authorized to subscribe, was not constructed, and needed the proceeds of the bonds to complete the work of construction. By accepting bonds upon the terms proposed it came under the obligation to expend the amount subscribed within the limits of the county. As the subscription to the stock was to be paid for by the bonds, the amount subscribed was the amount of the bonds. The bonds which the county was authorized by the legislature to issue were described in the law as "payable to bearer, with coupons attached, bearing any rate of interest not exceeding six per cent per annum, payable semi-annually in the city of New York, payable at such times as they may designate not exceeding thirty years from date." The bonds thus

described were evidently designed for the market. They could pass from hand to hand, since they were payable to bearer. The interest was represented by detachable coupons, and was payable at the chief money center of the country. It is manifest that the bonds were intended to be issued and delivered to the railroad company before the construction began. It would require the very strongest words in the vote to convince us that it was intended to attach to such bonds a condition which would destroy their obligation, if, after a term of years, it should appear that the construction had not been completed in the manner designated. Bonds with such a condition would be unsalable, and it is inconceivable that they could be issued with any expectation that they could be used. We cannot doubt that the county, in its anxiety to secure the building of the railroad, was content to rest upon the agreement of the company to construct it in the manner desired, and that the only technical condition to the validity of the bonds was that which referred to the exoneration from a prior subscription. As it turned out, it would have been very much wiser for the county to have declined to issue the bonds until the construction was completed, or to have taken some security for the performance of the agreement with reference to the construction. But courts cannot make for the parties better agreements than they themselves have been satisfied to make. The records of this court show that prudence has not been a marked characteristic in the issue of municipal bonds in aid of the construction of railroads.

Our conclusion upon the whole case is that, with the exception of the condition which has been performed, the bonds were issued upon a good consideration and unconditionally, and were a valid obligation of the county in whosesoever hands they subsequently lawfully came.

We have examined with attention and respect the case of *Green County* v. *Shortell*, 116 Kentucky, 108, wherein the Court of Appeals of the State arrived at a different conclusion, and regret that we are unable to concur in its reasoning.

The finding of the Circuit Court was that the plaintiff at the time of beginning his action, which was after the bonds were overdue, was the *bona fide* holder for value of the bonds and coupons sued on. In view of the conclusion at which we have arrived it seems unnecessary to dwell upon the exact terms of this finding. In any event, the plaintiff was the legal holder and owner of the bonds. This is not disputed. Assuming that any defense is open of which the holder might have had notice by inspecting the law, vote and the records of the County Court, it would come to nothing, because such an inspection would have shown that no defense to the payment of the bonds existed.

We need not consider what would have been the situation if the bonds were still in the hands of the railroad and it were bringing action upon them, and an attempt had been made to set up against their amount the damages resulting from the railroad's failure to perform the agreement with respect to construction. The bonds here are not in the hands of the railroad nor is any such defense set up. The defense is, that the bonds are null and void, and, as has been shown, that defense is without merit.

It appears that a recovery upon some of the coupons declared upon is barred by the statute of limitations. This is conceded by the plaintiff, who says that the judgment of the Circuit Court of Appeals, in view of the state of the pleadings, does not require that there should be a recovery upon the coupons thus barred. It is better, however, that this question be freed from doubt and the judgment be modified so as to require the Circuit Court to ascertain what coupons are barred by the statute of limitations and to enter judgment for the remainder, and for the principal of the bonds, of course, with interest in both cases. Thus modified, the judgment of the Circuit Court of Appeals is

Affirmed.

MR. JUSTICE HARLAN, dissenting.

I quite agree with Judge Lurton of the Circuit Court of Ap-

peals, that common justice requires that there should not be now any judgment upon the merits in these cases. He correctly said that the findings of fact do not adequately cover all the issues, and upon those to which they are responsive they are neither definite nor full enough to justify a judgment in favor of the plaintiff. Without expressing at this time any views upon the merits of these cases, I am of opinion that the judgment in each case should be reversed and the cases remanded with an order for a new trial, when all the facts may be more fully disclosed and sufficient findings made.

GREEN COUNTY, KENTUCKY, *v.* THOMAS' EXECUTOR.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 352. Argued December 18, 1908.—Decided January 4, 1909.

Green County v. *Quinlan*, *ante*, p. 582, followed as to the liability of a county on bonds issued for railroad assistance.

Where a technical mistake in the petition for writ of error is the result of accident the court is justified in allowing an amendment and denying a motion to dismiss.

Looseness of practice should not be encouraged, and while an appellate court should not enter final judgment for appellant without protecting the rights of the appellee, it is not bound to take notice of questions not set forth in the record, nor raised in the assignments of error, or where the appellant did not save his rights in the court below.

A finding that the plaintiffs below are *bona fide* holders of bonds and entitled to sue in the Circuit Court amounts to a finding that the plaintiffs are joint owners, and is sufficient to support jurisdiction if the aggregate amount exceeds $2,000.

If the defendant obligor owed the amount to the plaintiff at the commencement of the action it is not interested in the division of the verdict.

This court will not open the way to the raising of technical questions, and a plaintiff in error is only entitled to a decision on questions properly brought to its attention.
146 Fed. Rep. 969, affirmed.

THE facts are stated in the opinion.

Mr. Ernest Macpherson, with whom *Mr. John W. Lewis* was on the brief, for petitioner.

Mr. Alexander Pope Humphrey and *Mr. Alexander C. Ayers*, for respondents, submitted.

MR. JUSTICE MOODY delivered the opinion of the court.

This case relates to the same issue of bonds referred to in the one preceding, and is governed by it, unless there is something to prevent in the questions following.

There were several plaintiffs, including three corporations. In the petition they alleged that they were "jointly the owners and holders" of sixty-seven bonds, whose aggregate face value exceeded the jurisdictional amount. Diversity of citizenship was duly alleged. By leave of court, on suggestion of the death of one of the plaintiffs, and that his personal representatives had been discharged, his heirs were made parties plaintiff. No objection was made to this amendment by the defendant at the time. The defendant's answer denied that the plaintiffs were "jointly the owners or holders" of the bonds. Certain interrogatories to each of the plaintiffs were attached to the answer, which prayed that plaintiffs be compelled to answer them on oath. These interrogatories were directed to the subject of the acquisition and ownership of the bonds by the plaintiffs. The answers disclosed that the bonds in suit were taken from the Cumberland & Ohio Railroad Company by the Indianapolis Rolling Mill Company in payment for iron to be used in building the railroad through Green County, were by the mill company turned over to its stockholders (who were

the plaintiffs, or represented by them) as dividends, and that they, fifteen years before, agreed to become joint owners and holders of all the bonds in certain named proportions. And it was stated that each plaintiff owned an undivided interest in all the bonds and coupons in suit. The defendant then suggested the death of two of the plaintiffs, but no action appears to have been taken thereon by the court.

The defendant was permitted to file an amended answer, which alleged that, after the distribution of the bonds by way of dividends, each distributee owned a separate and distinct interest which were joined together to give the court jurisdiction, which, in the case of certain plaintiffs, it would otherwise lack on account of the insufficient value of their respective interests, and concluded by averring that the court was without jurisdiction.

The defendant moved the court for a rule on the plaintiffs to furnish dates of the deaths of the parties plaintiff named in the pleadings, who had died since the institution of the action, and to show cause why the action should not be dismissed for failure to revive within the time prescribed by law. This motion was denied and defendant excepted.

On the twenty-second day of March, 1905, the defendant moved the court to dismiss the action on the ground of misjoinder of plaintiffs, and for want of jurisdiction of such of the plaintiffs whose claims were separately less than $2,000. On the same day the parties stipulated that the issues of fact might be tried and determined by the court without the intervention of a jury.

On the first day of June, 1905, the Circuit Court ordered judgment for the defendant, with the same findings of fact and conclusions of law which were made in the preceding case. The plaintiffs, each and all, excepted to the judgment and to each part of it, and filed a petition for a writ of error to the Circuit Court of Appeals, with assignment of errors. The defendant did not object or except to the findings of fact, or request any rulings of law, or file any writ of error or assignment

of errors, or any bill of exceptions, or take any other step whatever which would carry to the appellate court any questions of law different from those contained in the plaintiffs' assignment of errors. Throughout the record, up to this point, the defendant appears to have been content to raise questions of law without attempting in any form to save any of its rights upon the resulting rulings of the court.

On the first day of May, 1906, the plaintiffs in error moved the Court of Appeals to amend the writ of error by striking out certain persons named therein as plaintiffs and by inserting the names of certain other persons. On the same day the defendant in error moved the court to dismiss the writ of error because some of the plaintiffs against whom judgment had been rendered in the court below had failed to prosecute the writ of error without a summons and severance, and because certain persons who were never parties to the action were named in the writ of error. These cross-motions seem to have raised the same questions. It appeared that owing to illness of counsel for the plaintiffs in error the petition for a writ did not set forth accurately the parties plaintiff. The error was a pure accident, and we think the court below was entirely justified in allowing the amendment and in denying the cross-motion to dismiss. Section 1005, Revised Statutes.

The Court of Appeals reversed the judgment of the Circuit Court, and ordered, as will hereafter more specifically appear, that court to enter a judgment for the plaintiffs. The case is here upon a writ of certiorari. It has been argued by the defendant, apparently upon the theory that all questions of law which were raised by it or were remotely suggested in the record, were open for consideration in the appellate court. But we ought not to encourage such looseness of practice. Some of the questions raised by the defendant were passed on adversely to it in the Circuit Court of Appeals, and we do not intend to intimate any doubt of the correctness of the decision of that court. The writ of error sued out by the plaintiffs, and the assignment of errors which accompanied it, set forth all the

questions regarding the action of the court below, of which the appellate court was bound to take notice. *The Maria Martin*, 12 Wall. 31, 40; *Bolles* v. *Outing Company*, 175 U. S. 262. Neither that court nor this ought to be expected to search through a confused record for the purpose of finding errors, where the party complaining has not taken the pains, at the time the alleged errors were committed, to save its rights in some form known to the law. It would be, of course, entirely unfair to enter final judgment in favor of the party appellant, unless the court can see that the findings of the court below are full and adequate and protect every substantial right of the party in whose favor the judgment originally was entered. But we think that the findings did this. The first finding of the court was that the plaintiffs at the date of the beginning of the suit were "the *bona fide* holders for value of the bonds and coupons sued on, and fully entitled to sue the defendant thereon in this Court." This is a finding which, among other things, supports the jurisdiction of the court, and could proceed only upon the theory that the plaintiffs were the joint owners and holders of the bonds and coupons sued on. If they were, the court had jurisdiction under the rule stated in *Clay* v. *Field*, 138 U. S. 464, 479.

The defendant owes the amount of these bonds, and at the beginning of this action owed it to the plaintiffs. It has no interest or concern in the proper division of the amount due on the bonds among those who are entitled to share the proceeds of the verdict. We are not disposed to open the way to the defendant to raise technical questions to embarrass the progress and delay the final ending of this action. The defendant is entitled to a decision upon the questions which it has properly brought to this court, and no others.

The judgment of the Court of Appeals was "that the judgment of the said Circuit Court in this cause be, and the same is hereby, reversed with costs and cause remanded with directions to the said Circuit Court that upon the suggestion on the record of the deaths of such of the original plaintiffs as have

died pending the suit and striking out the names of their personal representatives, it enter judgment for the plaintiffs as they then appear of record for the amount of the principal of the bonds in suit with interest thereon from the date when their latest coupons severally become due and for the coupons in suit with interest on each from the time when they severally fell due." We have no doubt of the correctness of this judgment or that it will protect every substantial right which the defendant has, and it is, therefore,

Affirmed.

MR. JUSTICE HARLAN'S dissent in *Green County* v. *Quinlan*, *ante*, pp. 582, 597, applies also to this case.